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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. [redacted] 67

RAYMOND JACKSON, AN INCOMPETENT PERSON BY MRS. JAMES A. HARRIS, GUARDIAN,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, CLARK AND ANNIE PAULINE NORVELL,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, AND SUPPORTING BRIEF

FIRTH E. RIDDLE,
Mayo Building,
Tulsa, Oklahoma;
I. F. BRADLEY,
453 Minnesota Avenue,
Kansas City (4) Kansas,
Counsel for Petitioner.

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RAYMOND JACKSON, AN INCOMPETENT PERSON BY MRS. JAMES A. HARRIS, GUARDIAN,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, CLARK AND ANNIE PAULINE NORVELL,

Respondents

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved

This petition involves and challenges the constitutionality, construction and application of the Act of Congress as amended, under date, June 25th, 1948, Section 265 of the Judicial Code (28 U.S.C.A. 379) as interpreted and applied

by the United States Circuit Court of Appeals for the Tenth Circuit; before amendment said section read:

> "The Writ of injunction shall not be granted by any Court of the United States, to stay proceedings in any court of the State except in cases where such injunction may be authorized by any law relating to proceedings in Bankruptcy."

This section was amended by Congress, or perhaps more accurately, recommended by the sub-committee of the Judiciary Committee in the nature of a revision approved by the House Appropriate Revision Committee; such action revised and codified reads:

> "A court of the United States may not grant an injunction to stay proceedings in a State Court, except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment."

Any one acquainted with the inside history of this litigation, it would appear that instead of being an amendment by Congress, it was an attempt on the part of said Sub-committee, in reality to overrule the opinion of the Supreme Court in the cause of *Toucey* v. *N. Y. Life Insurance Company,* 314 U. S. 118, 86 Law Ed., page 100.

Quoting from the case of *Toucey* v. *New York Life Insurance Company,* 314 U. S. 118, 86 L. Ed. 100, and quoting from page 104 the Court said:

> "The language of the Act of 1793 was unqualified * * * nor shall a writ of injunction be granted to stay proceedings of any court of a State * * *. 1st. Stat. at L. 335, Chap. 22, "in the course of one hundred and fifty years, Congress has made few withdrawals from this sweeping prohibition."

The judicial history of this long span of years discloses that there were no important conflicts between the Federal

and State Governments. Most of the time they ran smoothly, each in its own sphere of jurisdiction, when any conflict arose a few words of admonition from this Highest Court smoothed the controversy in a manner that no trace could be seen.

> "The provisions of Section 265, have never been the subject of comprehensive legislative re-examination. Even the exceptions referable to Legislation have been incidental features of other statutory schemes, such as the removal and interpleader acts."
>
> "Section 265 is not an isolated instance of withholding from the Federal Courts equity powers possessed by Anglo American Courts. As part of the delicate adjustment required by our Federalist Congress has rigorously controlled the inferior courts in their relations to the Courts of the State. * * *
>
> The guiding consideration in the enforcement of the Congressional policy was expressed by Mr. Justice Campbell for the Court in Taylor *v.* Carryl, 20 How. (U. S.) 583, 597. 15 L. Ed. 1028-1032.
>
> "The legislation of Congress in organizing the judicial powers of the United States, exhibits much *circumspection in avoiding occasions* for placing the tribunals of the States and of the Union in any collusion. (Emphasis ours.)
>
> "We must be scrupulous in our regard for the limits within which Congress has confined the authority of the Court of its own creation."

Statement Disclosing Basis of Jurisdiction To Review

The statute under which relief is sought in this Court, is Section 240 of the Judicial Code as amended, 43 Statute, 938; 28 U. S. C., Sec. 347.

The trial court's jurisdiction existed upon the following basis:

On account of diversity of citizenship, the plaintiff a resident and citizen of Tulsa, Oklahoma, and the Carter Oil

Company a citizen of the State of West Virginia, having been incorporated under said State.

The opinion of the Circuit Court of Appeals, we believe, has not been officially reported, but a certified copy is included in the transcript, pages 92-94. The decision of the Circuit Court of Appeals was rendered on January 3rd, 1950.

An order of a Justice of this Court extending the time to file petition up to and including May 9th, 1950.

Ten certified copies of the transcript from the Circuit Court of Appeals accompany this petition.

Statement of Case

Since the Act of Congress of 1793, more than a century and a half, has made no drastic amendments to said Section; in substance, the language found in the Section, in which Congress revised, adopted, approved and codified the same, as interpreted by the Supreme Court for over a century, there was no change made in the law except to overrule the Supreme Court as recited herein.

The United States District Court of the Eastern District of Oklahoma on May 4th, 1944, entered a summary decree in favor of defendants and against the petitioner, wherein the Court included in said decree, the following injunctive order:

> "That the plaintiff herein, the so called 'California Raymond Jackson', be and he is hereby restrained and perpetually enjoined from filing further suits or prosecuting further litigation against the defendants or their successors in interest, based on the claim that he is Raymond Jackson, the allottee of the land involved in this case, to all of which exceptions are duly allowed," (R. 2)
>
> "Bower Broaddus, District Judge."

That on February 12th, Honorable James A. Harris, of Wagoner, Oklahoma, was by the County and Probate Court of Tulsa County, Oklahoma, duly appointed guardian for Raymond Jackson, an "incompetent", petitioner herein; subsequently Mr. Harris died and his wife Mrs. James A. Harris, was appointed and succeeded as guardian (R. 7-9).

Petition To Establish Heirship and Seeking Instructions In Behalf of the Guardian. (R. 9.)

January 24, 1947, James A. Harris, the guardian filed his petition in the guardianship proceeding, as above indicated, in the County Court, No. 13990, Tulsa County, Oklahoma, the purpose of which was to have the Court decree heirship in the Estate of Davis A. Jackson, deceased; to request instructions as to the guardian and to perpetuate the testimony of Rhina Jackson, surviving widow of Davis A. Jackson, deceased, who departed this life in 1939.

After the issues were joined in the petition filed in the County Court as alleged, respondents filed their motion directed to the petitioner, his guardian and attorneys, to show cause why they should not be adjudged guilty of contempt of Court in filing said petition in the County Court (R. 3-6).

Respondents in the trial court filed their verified response denying the material allegations in the motion of defendants, alleging affirmatively the purpose of said proceedings:

Petitioner, on February 17, 1949, filed his amended response in the United States District Court alleging the purpose of said proceedings in the County Court, seeking advice from the Court to the guardian, James A. Harris, whether or not to have his counsel investigate the validity of the injunction, if found to be within the jurisdiction of the Court, whether or not he should apply to this Honorable Court (U. S. District Court) or to the Circuit Court of

Appeals, for an order granting leave to file a petition to vacate said injunction in view of the fact that no appellate court had ever considered the "incompetent's" legal right to the property involved and in view of the further fact that no Court, Trial or Appellate, had ever considered or adjudicated the issue of fraud growing out of the conspiracy, bribery and perjury as alleged, which had been concealed in the breasts of the perpetrators for ten years, and until after the death of Davis A. Jackson in 1939, the death of his lawyers in 1941 and 1942, and after the latter dates, the wife, Rhina Jackson disclosed the conspiracy, the bribery and perjury in an affidavit. The lawyers for petitioner attempted to introduce the affidavits in the trial of petitioner's case in the U. S. District Court, in March, 1945, which the Court rightly held the affidavits were not competent testimony upon the merits. This is the only consideration the issue of fraud ever had on account of said injunction.

Respondents, defendants below, filed their reply to amended response, filed by respondents below, to the motion to show cause (R. 33).

Upon examination of said reply, it will be noted that defendants did not deny the charge of conspiracy, bribery and perjury as alleged in the amended response (R. 25).

Order overruling motion to show cause (R. 24-25).

Order sustaining motion to set aside order, overruling motion to show cause (R. 35-36).

Order granting injunction (R. 36).

> "Wherefore it is hereby ordered that the plaintiff, Raymond Jackson, Mrs. James A. Harris, his guardian, and their attorneys, F. E. Riddle and I. F. Bradley, Jr., and A. G. W. Sango, be, and they are hereby restrained and perpetually enjoined from further prosecuting in the County Court of Tulsa County, Oklahoma, the claim that said plaintiff, Raymond Jackson is the

son of Davis A. Jackson, deceased, and as such is the allottee of the land involved in this proceeding, and from filing further litigation against the defendants or their successors in interest, based on the claim that the plaintiff is Raymond Jackson, the allottee of the land involved in this case, to which order plaintiff excepts and exceptions are duly allowed.

BOWER BROADDUS,
District Judge."

The Subcommitte of Congress evidently overlooked or at least if failed to heed this important and wise admonition of this High Court, as recited herein.

Congress *to the contrary created opportunity* and encouraged action which is now calculated to induce conflict and litigation.

The language of Congress in the Amendment, vested a discretion in the hundreds of Circuit and District Judges, in granting injunctions in staying proceedings in the State Courts, both as to the character of proceedings enjoined and as to the stage and condition of the action when an injunction shall issue.

In the case of *Dugas* v. *American Surety Co.*, 300 U. S. 414-428, 81 L. Ed. 720, the Court said:

> "Such a bill may be brought in the Federal Court in aid of and to effectuate his prior judgment decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but *subject to the qualification that the relief be not of a different kind or* different principle."
>
> Cited: Franch *vs.* Hay, French *vs.* Stuart, 22 Wall. 250; 22 L. Ed. 857; Route *vs.* Woolworth, 150 U. S. 411; 37 L. Ed. 1125. Julian *vs.* Central Trust Co., 193 U. S., 93. 48 L. Ed. 462. Madisonville Traction Co. *vs.* State Board Min. Co., 196 U. S. 339-345; 49 L. Ed. 1084; Wells *vs.* Eastern Ry. Co., 247 U. S. 214; 62

L. Ed. 1084. Wells *vs.* Largo Co. *vs.* Taylor, 254 U. S. 175; 65 L. Ed. 205-212.

It is difficult to see how a County or Probate Court with jurisdiction confined generally to the usual probate procedure, could try and render a judgment, which would not be a different kind of relief or involve different principle, from that rendered and involved in the Federal proceedings and decree.

Questions Presented

(a) May Congress grant power and authority to the United States District Court, to be exercised in its discretion, to perpetually enjoin a citizen of the State from instituting a proceeding in a County and Probate Court in the State; a court created by the State, exercising general probate jurisdiction, when the main purpose of such proceeding, as alleged, is to decree heirship; to have the Court to instruct the guardian of an incompetent, and to perpetuate the testimony of a witness, in the absence of any court with corresponding jurisdiction under the Federal Judiciary, upon the assumption and proposition that it is an attempt to re-try issues previously tried and adjudicated in the Federal District Court?

(b) The guardian of petitioner, an incompetent, filed his petition in the County and Probate Court, a court created by the State Constitution with general probate jurisdiction; the purpose of said proceedings in the main, was to have decreed heirship, in the estate of Davis A. Jackson, deceased, leaving more than a dozen children surviving. Petitioner claiming to be one of said children. The deceased leaving an estate of approximately $15,000.00; to seek instruction to the guardian; to perpetuate the testimony of the surviving wife. In the circumstances may the United States District Court under Section 2283 of Title

28 of the U. S. Code, entitled "Judicial Code and Judiciary" perpetually enjoin petitioner, his guardian and attorneys, from proceeding under said petition in the County Court?

(c) No important and drastic amendments have been enacted by Congress since the Judiciary Act of date, 1793, a span of more than a Century and a half; both the Federal and State Courts have operated and exercised their respective jurisdictions, side by side, each in its own sphere, with little friction and slight ground of complaint.

(d) There has been only one decision and opinion, so far as we are advised, based upon the change in the phraseology of Section 2283 of Title 28 of the Judicial Code, but we may expect other decisions and opinions in the future, until this High Court renders an opinion clarifying the language of the Amendment of Congress in controversy.

Reasons Relied On For Allowance of the Writ

(a) This High Court under the Act of Congress of 1793, and Amendments enacted thereto inauguarated and promulgated a rule as a guide to all inferior courts, authorizing in plain language and giving them power to protect their rightful jurisdiction, and judgments, and to fully execute and effectuate the same.

(b) This rule has been followed by this High Court many, many times and by the Circuit and District Courts throughout their jurisdiction, whenever an occasion made it necessary, hundreds of times. This rule of this Court in effect and substance in direct language enforcing the rule with little discretion, if any, vested in the Inferior Courts. What the Sub-committee did, or attempted to do, was, it appears through the so called amendment encroached upon this Court's jurisdiction and has undertaken to direct its own rule, in its own language to all inferior courts, and

Judges. This directive in the language of the Amendment, to the inferior courts and Judges, likely would appear as giving them more discretion where it was not intended, creating confusion, misunderstanding, and frequently giving encouragement of invasion of the jurisdiction and domain of County and Probate Courts.

It would seem that the decision and opinion of the Circuit Court of Appeals requires supervision of this Court to clarify the language of the Amended Act.

The United States Circuit Court of Appeals for the Tenth Circuit

(a) Rendered a decision and opinion sought to be reviewed, decided an important question of Federal law of procedure which has not been, but we believe should be settled by this Court;

(b) Said Court has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

(c) And has so far departed from the accepted and usual course of Judicial proceedings, or so far sanctioned such departure by a Lower Court as to call for an exercise of this Court's power of supervision.

SUPPORTING BRIEF

Proposition I

The Trial Court Was Right in Dismissing and Holding for Naught the Motion and Citation to Show Cause for Three Reasons:

First: Because it was impossible for petitioner to retry the issues tried in the Federal Court for lack of jurisdiction in the County and Probate Court of Oklahoma.

Proposition II

Because respondents' judgment had long since been executed and fully effectuated, in that the Carter Oil Company for more than fifteen years had exclusive possession and control of its "ill gotten gain", receiving all the rents and profits therefrom unmolested.

Proposition III

In order for a litigant to retry an issue previously tried in the Federal Court, the State Court must have jurisdiction and authority to try the said issue upon the same principle and not upon a different kind of relief, from that tried in the Federal Court.

In the case of *Dugas* v. *American Surety Co.*, 300 United States, 414-428; 81 L. Ed. 720, the Court said:

> "Such a bill may be brought in the Federal Court in aid of and to effectuate his prior judgment decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but subject to the *qualification that the relief be not of a different kind or different principle.*"
>
> Cited: French *vs.* Hay. Franch *vs.* Stuart, 22 Wall. 250; 22 L. Ed. 857; Route *vs.* Woolworth, 150 U. S. 411; 27 L. Ed. 1125; Julian *vs.* Central Trust Co., 193 U. S.

93; 48 L. Ed. 629. Madisonville Traction Co. *vs.* State Board Min. Co. 196 U.S. 339-345; 49 L. Ed. 462. Looney *vs.* Eastern Ry. Co., 247 U. S. 214; 62 L. Ed. 1084. Wells Fargo Co. *vs.* Taylor, 254 U. S. 175; 65 L. Ed. 205-212."

PROPOSITION IV

The remedy of contempt of court is penal in its nature, and is a severe remedy; should not be resorted to "successfully" unless the facts constituting the contempt are clearly established and bring the case clearly within the prohibited order of the court.

City of Campbell v. *Arkansas Power Co., Missouri Power Co.* (C. C. A. 8), 65 Fed. (2nd) 425-428. Sanborn, Circuit Judge, delivering the opinion of the court, the Court stated:

> "Process of contempt is a severe remedy, and should not be resorted to where the fair ground of doubt as to the wrongfulness of the defendants' conduct."
>
> Artificial Stone Paving Co. *vs.* Malitor, 113 U. S. 609-618; 28 Law Ed.

Quoting from the opinion sought to be reviewed in this proceeding, the Court said:

> "Prior to the Toucey decision, the law was generally understood and interpreted to the effect that the Federal Courts had the power to protect and effectuate their prior judgments by injunctions against the relitigation of cases and controversies, in State Courts."

This opinion has not yet been reported officially, we believe, but is found, "(R. 91-95)."

This excerpt lends support to our argument that Congress overruled the opinion in the *Toucey* case.

It is our deliberate judgment that the amendment complained of vests in the inferior courts too much discretion, vesting the trial judges and the Courts a great latitude in the exercise of their judgment, which may cause this

Court much unnecessary litigation, especially preliminary questions arising under petitions for Writs of Certiorari, and is likely to develop into a wide field of operation. We do not believe that under the Federal Judiciary Act and the amendments thereof, that it was ever contemplated in the withdrawal of the exceptions to the original Judicial Act and Judiciary, that neither the Congress nor this Court either, contemplated that such withdrawal would extend to the State, County and Probate Courts, for lack of proper jurisdiction to determine the same issue previously tried in the Federal Court.

In Oklahoma, we have seventy-seven Counties and Probate Courts, and if litigants and the Court may be enjoined from proceeding in one County, this leaves an opportunity and invitation for further litigants to enjoin proceedings in every other County and Probate Court. Not only this, but out of the forty-eight States there are probably an average of fifty Counties and Probate Courts in each State, which would leave the question open to extend to approximately twenty-five hundred Counties and Probate Courts, in which litigants might be induced to enjoin proceedings and litigants in many of the counties in the Nation.

THEREFORE, we respectfully pray that the Writ of Certiorari shall issue in this case and the statute under consideration at least clarified, if not fully reversed.

Respectfully submitted,

FINIS E. RIDDLE,
Mayo Building,
Tulsa, Oklahoma.
I. F. BRADLEY,
453 Minnesota Ave.,
Kansas City (4), Kansas.

STATE OF OKLAHOMA,
Tulsa County, ss:

Finis E. Riddle, counsel for the petitioner, and a member of the Bar of the Supreme Court of the United States of America, upon his oath states:

That the facts alleged and set forth in the petition for Writ of Certiorari, are true to the best of his knowledge and belief. Affiant further certifies that he believes the petition as a whole is well taken in law.

FINIS E. RIDDLE.

Subscribed and sworn to before me on this 6th day of May, 1950.

VERNA DE ARMAND,
Notary Public.

My Com. Exp. 7/7/52.

(8212)

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RAYMOND JACKSON, AN INCOMPETENT PERSON, BY MRS. JAMES A. HARRIS, GUARDIAN,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYN NORVELL CLARKE, AND ANNIE PAULINE NORVELL,

Respondents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF *CERTIORARI.*

FORREST M. DARROUGH,
P. O. Box 801,
Tulsa, Oklahoma,

W. T. ANGLIN,
Holdenville, Oklahoma,
Attorneys for Respondents.

GLENN O. WALLACE,
W. M. HAULSEE,
Wewoka, Oklahoma,
Of Counsel.

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1949.

No. 815

RAYMOND JACKSON, AN INCOMPETENT PERSON, BY MRS. JAMES A. HARRIS, GUARDIAN,
Petitioner,
vs.
THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYN NORVELL CLARKE, AND ANNIE PAULINE NORVELL,
Responents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF *CERTIORARI.*

For the second time this case comes to the Supreme Court on petitioner's application for writ of certiorari. His first application was filed in the October Term, 1946, in Case No. 747. Certiorari was therein denied on January 20, 1947. (*Raymond Jackson, an Incompetent,* v. *Carter Oil Co., et al.,* 329 U. S. 809, 91 L. ed. 690.)

By this second application petitioner attempts to have reviewed a judgment of the Court of Appeals, Tenth Circuit, entered on January 3, 1950 (R. 95-96). Therein the appellate court affirmed a judgment of the United States District Court for the Eastern District of Oklahoma entered on February 25, 1949, (R. 36-37) enjoining petitioner from further prosecuting in the County Court of Tulsa County, Oklahoma, the claim that he is Raymond Jackson, the allottee of the land involved in the litigation and the son of Davis A. Jackson, deceased.

Statement of the Case.

The history of this litigation will help to an understanding of the circumstances surrounding the Order entered by the Federal District Court on February 25, 1949. The opinion of the Court of Appeals sets this out briefly as follows:

> "The matter has been in the courts since 1932 and this is the third time that it has been before this court. The issue in all the litigation has been the identity of Raymond Jackson, a Seminole freedman, who was allotted the oil bearing lands involved in all the cases. The facts are fully set forth in the opinions of this court in the cases of *Jackson* v. *Jackson,* 67 F. (2d) 719, and *Jackson* v. *Carter Oil Co.,* 156 F. (2d) 726, and will not be repeated here. In the numerous actions, including this one, the appellant maintained that he was the Raymond Jackson to whom the land was allotted and that he was being deprived of the lands and the proceeds thereof by fraud and collusion. Each time these questions were presented to the trial court there resulted a finding and final judgment that he was not the allottee but was an imposter." (R. 91-92) (*Jackson* v. *Carter Oil Co., et al.,* 179 F. (2d) 524.)

It was in the light of this background that the Order and Decree of May 4, 1944, was entered, perpetually enjoining petitioner from prosecuting further litigation against the defendants based on the claim that he is Raymond Jackson, the allottee of the land involved in the proceeding. (R. 1 and 2) Also, it was in the light of this background that the Order of February 25, 1949, was entered.

From the Order and Decree of May 4, 1944, petitioner appealed to the Court of Appeals, Tenth Circuit, and the judgment of the District Court was there affirmed.

(*Jackson* v. *The Carter Oil Company, et al.*, 156 F. (2d) 726.) Following the disposition of said appeal by the Court of Appeals, petitioner filed in this Court his petition for writ of certiorari (October Term, 1946, No. 747), which petition, as heretofore indicated, was by this Court denied on the 20th day of January, 1947.

Shortly after the case was so disposed of in this Court, a petition was filed in the County Court of Tulsa County for the appointment of a guardian for petitioner, an incompetent. (R. 7-9) Upon the petition so filed a guardian was appointed and said guardian on February 12, 1947, filed in the guardianship proceedings a pleading which was designated "*Petition to Establish Heirship and Seeking Instructions on Behalf of the Guardian.*" Therein it was alleged that the ward, petitioner herein, was in fact the allottee of the 40 acres of land involved in the prior pending litigation. The declared purpose of the proceeding in the County Court was to further litigate the claim that petitioner was in fact the allottee of the land in question. (R. 9-16)

On March 7, 1947, respondents herein filed in the Federal District Court a motion requesting an order requiring petitioner, his guardian, and his attorneys to appear before the Court to show cause why they should not be adjudged guilty of contempt for violating provisions of the decree of May 4, 1944, and why they should not be enjoined from further prosecuting the proceedings in the state court. (R. 3-6)

On March 19, 1947, the court overruled this motion on the grounds that it was without jurisdiction to interfere with proceedings in the state court. (R. 23-24)

In denying respondents' motion to show cause the court followed the rule established in *Toucey* v. *New York Life*

Insurance Company, 314 U. S. 118, 86 L. ed. 100. Shortly after the revision and codification of the Judicial Code in 1948, the respondents filed their *motion to set aside order overruling motion to show cause,* and asked for the relief prayed for in the original motion. (R. 24-25) On January 27, 1949, the District Court sustained the motion to set aside the former order overruling the motion to show cause (R. 35-36), and on February 25, 1949, the District Court entered its order restraining and perpetually enjoining petitioner, his guardian and attorneys, from further prosecuting in the Tulsa County Court the claim that petitioner is the son of Davis A. Jackson, deceased, and as such the allottee of the land involved. (R. 36-37) The judgment of the District Court was unanimously affirmed by the Court of Appeals on January 3, 1950. (R. 95-96)

Then followed the filing of the petition for writ of certiorari in this Court.

ARGUMENT *and* AUTHORITIES.

Petitioner's reasons for certiorari are set forth on pages 9 and 10 of his petition. They are stated under two subdivisions; however, they are really but one, which is that the amendment of the Judicial Code in 1948, granting additional power to the Federal Court to protect its judgments, constitutes an encroachment upon the Supreme Court's jurisdiction and an attempt by Congress to establish its own rule as a guide to all inferior courts and the judges thereof, which rule, if followed, would tend to create confusion and misunderstanding.

The issues presented in this case are such as to fall naturally into two headings, which will be followed in the presentation of the argument and authorities in this brief, as follows:

PROPOSITION I: *The trial court had complete jurisdiction to enter its order of February 25, 1949, thereby protecting its former judgment.*

PROPOSITION II: *The appellant by attempting to relitigate in the County Court of Tulsa County issues repeatedly tried and disposed of in the Federal Court is violating the Order and Decree of May 4, 1944.*

PROPOSITION I.

The Trial Court had complete jurisdiction to enter its order of February 25, 1949, thereby protecting its former judgment.

In the order and decree of May 4, 1944, sustaining defendants' amended motion for summary judgment and dis-

missing plaintiff's amended complaint with prejudice, it was provided:

> "* * * that the plaintiff herein, the so-called 'California Raymond Jackson' be and he is hereby restrained and perpetually enjoined from filing further suits or prosecuting further litigation against the defendants, or their successors in interest, based on the claim that he is Raymond Jackson, the allottee of the land involved in this case." (R. 2)

Said order and decree has not been reversed, vacated or set aside but is still in full force and effect.

Prior to its repeal by the Act of June 25, 1948, Section 265 of the Judicial Code (28 U. S. C. A. 379) reads as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

In construing said section of the code, the United States Supreme Court in 1941 in the case of *Toucey* v. *New York Life Insurance Company,* 314 U. S. 118, 86 L. ed. 100, held that the Federal Courts were without power to enjoin relitigation of cases and controversies in state courts, which had theretofore been fully adjudicated in Federal Courts. There was a vigorous dissenting opinion. It was upon the authority of this case that Judge Broaddus first overruled respondents' motion to show cause.

After said motion to show cause was overruled by the court, the Judicial Code was revised and codified. Incident to such revision the section above quoted was repealed and there was substituted therefor Section 2283 of Title

28, of the U. S. Code, entitled "Judicial Code and Judiciary," which reads as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The legislative history of this particular amendment clearly discloses the purpose thereby intended to be accomplished. The following is taken from the hearing before Subcommittee No. 1 of the House of Representatives:

> "*Stay of State Court Proceedings.* Section 2283 changes the construction which the Supreme Court put upon present 28 U. S. C., Section 379, in *Toucey* v. *New York Life Insurance Company,* (1941) 314 U. S. 44, 62 S. Ct. 6, 86 L. ed. 28, 135 A. L. R. 1222, where the Supreme Court ruled that a Federal Court could not enjoin relitigation of a matter in a State Court proceeding; in other words, the Federal District Court could not protect its judgment."

The Reviser's Notes also disclose the purpose intended by the amendment. The following is taken from said notes as they pertain to Section 2283:

> "*Section 2283—Section Revised.* Based on Title 28, U. S. C., 1940 Ed., Sec. 379 (Mar. 3, 1911, ch. 231, Sec. 265, 36 Stat. 1162).
>
> "An exception as to Acts of Congresss relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
>
> "The phrase 'in aid of its jurisdiction' was added to conform to Section 1651 of this title and to make clear the recognized power of the Federal Courts to stay proceedings in state cases removed to the District Courts.

"The exceptions specifically include the words 'to protect or effectuate its judgments,' for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey* v. *New York Life Insurance Co.*, 62 S. Ct. 139, 314 U. S. 118, 86 L. ed. 100. A vigorous dissenting opinion (62 S. Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

"Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision.

"Changes were made in phraseology."

From the foregoing it is quite clear that the very purpose of the revision of Section 2283 of Title 28 of the Judicial Code was to grant to the Federal Courts the specific authority to enjoin a relitigation of controversies in State Courts when such controversies have been theretofore fully adjudicated in the Federal Courts.

It is petitioner's position in the instant case that the Congress, by so amending the section of the Code referred to, has "encroached upon this Court's jurisdiction and has undertaken to direct its own rule, in its own language to all inferior courts, and judges." Petitioner's argument in this regard should be addressed to the Congress and not to this Court. If, as petitioner admits, Congress intended to grant this added power, the Federal Courts have no alternative but to proceed under the authority so conferred.

It seems apparent that by its Order of February 25, 1949, the District Court was but protecting and effectuating its former judgment of May 4, 1944. This was clearly with-

in the powers granted under Section 2283, Title 28, of the United States Code above quoted. Its jurisdiction to enter such an order is clear.

PROPOSITION II.

The appellant by attempting to relitigate in the County Court of Tulsa County issues repeatedly tried and disposed of in the Federal Court is violating the order and decree of May 4, 1944.

It is of first and primary importance in considering this proposition to review the petition filed by the petitioner in the County Court of Tulsa County to see just what issues are there presented as they affect the instant case.

Said petition is shown at pages 9-16 of the record. Therein the guardian alleges that his ward is Raymond Jackson, the allottee of the 40 acres in question; that he is the son of Davis A. and Rhina Jackson; that at the time of the death of Davis A. Jackson the record title to said 40-acre tract was in Davis A. and Rhina Jackson, but that said record title was fraudulent and void; that Raymond Jackson was in reality the beneficial owner of said land; that he had been cheated and defrauded out of his allotment by reason of the fact that Davis A. Jackson, his father, entered into a conspiracy with his attorneys, the purpose of which was to defraud Raymond and to cause the United States District Court to decree title thereto in Davis A. and Rhina Jackson; that to effectuate said conspiracy it was agreed that Davis A. and Rhina Jackson should disown Raymond and should appear in the Federal Court and testify that Raymond was not their son; that they so testified and did thereby cause the Federal Court to adjudicate and decree that said Raymond was an im-

postor and that their son had been killed by a freight train at Blue Mountain, Arkansas, on November 8, 1921; that the judgment of April 18, 1932, was induced by false testimony and conspiracy; that in January, 1939, petition was filed in the United States District Court for the Eastern District of Oklahoma to vacate and set aside the earlier judgment; that Judge KENNAMER in deciding said case adversely was influenced by statements of Rhina Jackson made off the record; that since the death of Davis A. Jackson in 1939 and the death of his attorneys, Norvell and Norvell, in 1942 and 1943, the mother, sisters and brother of Raymond have been released from the fear under which they had lived prior thereto and that certain of them had made affidavits changing their former testimony as to Raymond's identity; that on account of the fraud and false testimony in prior cases a doubt has been created as to the identity of Raymond; that it is proper and necessary for the County Court to determine the heirship in the guardianship proceeding and to determine the issue and question as to whether he is in reality Raymond Jackson, the son of Davis A. and Rhina Jackson and the allottee of the 40-acre tract in question.

By order of the County Court (R. 17) and summons served on respondents they were required to answer the petition so filed, failing which they were warned that judgment would be entered against them as prayed for in the petition. An amended petition was filed in the County Court of Tulsa County by said guardian (R. 42-60), and a second amended petition was thereafter filed (R. 60-71), the effect of which pleadings was to reaffirm and reallege the allegations contained in the original petition.

With the issues in mind as presented by the petitioner in the County Court let us again look to the order and de-

cree of May 4, 1944, to see whether or not that order was being violated. It will be recalled that in said order petitioner was restrained and perpetually enjoined from filing further suits and prosecuting further litigation against respondents based on the claim that he was Raymond Jackson, the allottee of the land involved. (R. 2)

Even a casual review of the proceedings in the Tulsa County Court discloses that petitioner was therein attempting to prosecute further litigation against the respondents based on the claim that he is Raymond Jackson, the allottee of the land involved. Under these circumstances, the trial court could do nothing but find that petitioner was violating the order and decree of May 4, 1944, and that he should be enjoined from further prosecuting claims asserted therein in violation of said order.

Petitioner in his brief would attempt to make it appear that the main purpose of the proceeding in the County Court of Tulsa County was to have there determined the heirship of Davis A. Jackson, deceased. In this regard it is interesting to note that a Petition for Probate of Will in the Matter of the Estate of Davis A. Jackson, Deceased, was filed in the County Court of Seminole County, Oklahoma, under date of May 31, 1939 (R. 77-79); that Certificate of Probate of Will was duly entered in said case under date of May 31, 1939 (R. 79-80); that Letters Testamentary were duly filed in said proceeding on June 12, 1939 (R. 82-83); and that a Decree Approving Final Accounting, Distributing Estate, Discharging Executrix and Discharging Bondsman was filed in said proceeding on August 8, 1943 (R. 83-88).

It seems quite clear that if the petitioner herein had desired in good faith to have litigated in the probate court the question of his right as an heir to any part or portion

of the estate of Davis A. Jackson, deceased, such litigation would have been in the County Court of Seminole County, Oklahoma, the court having jurisdiction of the estate of Davis A. Jackson, deceased, and not in a guardianship proceeding filed in Tulsa County, Oklahoma.

The record in this case is conclusive that petitioner, by the proceeding in the County Court of Tulsa County, Oklahoma, was attempting to relitigate therein issues previously tried and disposed of in the Federal Court. This was in clear violation of Judge BROADDUS' order and decree of May 4, 1944, and the trial court had no alternative but to enjoin petitioner and his attorneys from further prosecuting such claims. This the court did by its order of February 25, 1949.

Conclusion.

No one can say that petitioner has not had his day in court. Two times and at great length this case was tried before Judge WILLIAMS; three years after Judge WILLIAMS' second judgment against him, petitioner tried again to impeach the former decrees but the District Court refused him permission to file a bill of review; two years later Judge KENNAMER was called upon to pass on petitioner's claim; four years after Judge KENNAMER had held against him, petitioner attempted to relitigate his claim, this time before Judge BROADDUS; two years after Judge BROADDUS had held against him, petitioner made his sixth effort. This time Judge BROADDUS again entered an order against him. Added to all these are two judgments of the United States Court of Appeals, Tenth Circuit; then finally there is the prior refusal of the United States Supreme Court to entertain a writ of certiorari in the 1946 Term.

At some time there must be a finality of judgment and an end to litigation. The order and decree of May 4, 1944, should have ended this litigation, subject only to the petitioner's right of appeal. If petitioner is to be permitted now to start through the state courts to relitigate the issues heretofore repeatedly disposed of in the Federal Courts, there would, indeed, seem to be no end to this litigation. So long as the case is pending in any court, petitioner is in position to enlist new financial backers. The District Court has done its best to put a stop to the further maneuvering of this individual. The Court of Appeals, Tenth Circuit, has heretofore placed its stamp of disapproval upon the use of the courts for the purpose of furthering a "racket," such as has been through the years perpetrated by the petitioner upon the lawyers and laymen of Oklahoma and other states. We feel confident that this Court will promptly terminate this harassing litigation.

Under the rules of this Court a review on writ of certiorari is not a matter of right but of sound judicial discretion. It will be granted only where there are special and important reasons therefor. There are no such special or important reasons for granting such writ in this case. The application for writ of certiorari should be denied.

Respectfully submitted,

FORREST M. DARROUGH,
P. O. Box 801,
Tulsa, Oklahoma,

W. T. ANGLIN,
Holdenville, Oklahoma,
Attorneys for Respondents.

GLENN O. WALLACE,
W. M. HAULSEE,
Wewoka, Oklahoma,
Of Counsel.

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term 1949.

No. 815.

RAYMOND JACKSON, AN INCOMPETENT PERSON, SUING BY AND THROUGH MRS. JAMES A. HARRIS, GUARDIAN, *Petitioner,*

vs.

THE CARTER OIL COMPANY, A CORPORATION, CAROLYN NORVELL CLARK, ANNIE PAULINE NORVELL, RUBY E. NORVELL, AND ALBERT NORVELL, *Respondents.*

REPLY BRIEF *of* PETITIONER.

Opposing counsel quotes supposedly from one of three Raymond Jackson cases, or rather he quotes from Judge PICKETT's opinion from the Tenth Circuit Court in case of *Jackson* v. *Carter Oil Company, et al.*, 179 F. (2d) 524. We are not sure just where Judge PICKETT found this quotation if intended as a quotation, which is contained in his opinion. He had been a member of the Court only a few months prior to writing the opinion, and perhaps not too familiar with the record.

Counsel prefaces his "statement of the case" in this language: "The history of this litigation will help to an understanding the order entered by the Federal District Court on February 28, 1949." We doubt this very much.

After the quotation counsel states: "It was in the light of this background that the order and decree of May 4th, 1944, was entered."

In the middle of the quotation on page 2 the Court states: "The facts are fully set forth in the opinion of this Court in the cases of *Jackson* v. *Jackson*, 67 F. (2d) 719, and *Jackson* v. *Carter Oil Co.*, 156 F. (2d) 726, and will not be repeated here."

The truth is, the California Raymond Jackson never was in the case styled *Jackson* v. *Jackson* in an appellate court; he was not before the Court of Appeals in person, by agent or counsel in the case of *Jackson* v. *Jackson*, 67 F. (2d) 719. The appellant in that case was referred to in the trial as the Kentucky Raymond Jackson—notwithstanding the California Jackson, the petitioner herein, had appealed his case (a separate appeal) but the appeal had been dismissed for failure to deposit the necessary money for printing the record. The Court in the opinion disclosed clearly the appellant in that case was not the California Jackson (Raymond), the Court near the top of page 719 states: "Appellant instituted an action, likewise alleging that he was the allottee." The several cases were consolidated for trial.

The confusion and mystery was the result of the Court consolidating the California Raymond's ejectment suit with the other two suits in equity, which had already been tried with the exception of the Court making findings of fact and entering a decree.

Quoting from page 720 the Court states: "It is conceded that the allottee, son of Davis A. Jackson and Rhina Jackson, lived in the home of his parents near Wewoka, Oklahoma, and that he left his home in October, 1921, at the age of eighteen and one-half years." The Court pro-

ceeds discussing appellant who was known as the Kentucky Raymond Jackson and who lived in Fulton, Kentucky. Witnesses testified that he was reared in Fulton, living there all of his life.

The Court states on page 721, "A photograph of appellant, taken after he came to Oklahoma in 1929, and about a year before the trial began is contained in the record. It convinces us that he was not less than thirty-five to forty years old." In other words, he was fifteen to twenty years older than the California Raymond.

It is difficult to understand how the Court could have applied any of the record in the case to the "California Raymond." It is also difficult to understand how opposing counsel could come to the conclusion that his quotation on page two of his brief used as a "background" would tend to enlighten this Court in view of the fact that the petitioner was not before the Court in that case cited in the quotation. It is more difficult to understand why Rhina Jackson, Raymond's mother, and some of her children could not recognize Raymond after he had lived in the home continuously till he was 18½ years old—they did, but they had been bribed not to recognize him. (Rhina Jackson's affidavit, R. 62-63.)

It may be conceded that when issues and controversies have been fully adjudicated in the Federal Courts, such courts have the authority to enjoin a "relitigation" of such controversies in the State Court.

The trouble with the application of said proposition by opposing counsel is, that the facts do not support his proposition. There is a vital and important issue of fraud practiced upon petitioner, and likewise upon the trial court, which fraud was concealed from petitioner and from the court, until in April, 1943, when for the first time it was

confessed by the only innocent perpetrators of the fraud, Rhina Jackson, and came in the open. This issue of fraud has not been specifically denied by respondents (R. 62-63), and has never been investigated, considered and adjudicated by any trial court or by any appellate court upon appeal from any decree from a trial court, upon the merits. There has never been any trial on the merits since the second trial in 1934, and the issue of fraud was not known then to petitioner, his attorneys, or the court.

On page 8 of counsel's brief, they state that petitioner asserts that Congress, in an attempt to amend the Judicial Code, has encroached upon this High Court's jurisdiction and they suggest if such is our view we should have appealed to Congress instead of to the Judicial Department of the Government. We have always believed and still believe that when the legislative branch of the Government attempts to enter the domain of the Judicial Department by attempting to overrule decisions of the court or otherwise, it is quite proper for the Court to stop such unauthorized invasion of the Court's domain and make the proper correction. We commented briefly on this point in our petition and supporting brief.

The appellant (evidently meaning petitioner) by attempting to "relitigate" in the County Court of Tulsa County issues repeatedly tried and disposed of in the Federal Court is violating the order and decree of May the 4th, 1944.

If this proposition were true, counsel might have something, but it is not true. We do not mean to be disrespectful by speaking plainly or bluntly, we merely indicate our earnestness.

Counsel's proposition "by attempting to relitigate issues repeatedly tried and disposed of." This proposition

presumptively, almost conclusively, implies that the issues of fraud, conspiracy, bribery and perjury had been tried. In fact it is much stronger than a presumption, because counsel state "repeatedly tried."

The truth is, if it had been fully tried and adjudicated and fraud was not concealed from petitioner and Court, one trial would be as efficacious as "repeated trials." We repeat, the conspiracy, bribery and perjury were concealed until after Jackson's death and his lawyer's death.

The main difficulty has been such eminent counsel representing this octopus client, after the fraud was confessed and disclosed by Rhina Jackson, after her husband's death in 1939 and his lawyers' deaths in 1941 and 1942, respectively, when respondents were confronted in Court with the issue of the conspiracy, bribery and perjury, counsel were always able to get the action dismissed, or otherwise sidetracked and thereby evade a trial, in the face of the fact that respondents never did directly deny this issue of fraud. (R. 33) Imphatically, it has never been tried and adjudicated by a trial court or an appellate court on appeal. Counsel cannot point the Court to the record disclosing said fact. We shall try and make our contention clear on this point.

The writer had nothing to do with the trial of the case until about ten years after the suit was filed. He became so thoroughly convinced from the facts and circumstances that a gigantic and wicked fraud had been practiced upon this "incompetent negro boy," as well as upon the Court, that he was impressed that to permit him to be robbed of his birthright by virtue of this conspiracy entered into by and between his father and his two lawyers—wherein the father and mother were both bribed to disown the son; to go into the Federal Court and corruptly swear that he was not their son, but was an impostor; the father and his law-

yers compelling his mother, brothers and sisters through force, intimidation and threat to the extent of taking life should they recognize Raymond as a member of the family—all of which was knowingly and corruptly engaged in solely for gain. Even during the trial they caused the negro bones who was killed on the freight train at Blue Mountain, Arkansas, where they had been buried for ten years, to be boxed, shipped, and buried in Jackson's graveyard at Wewoka, Oklahoma; through intimidation and threats against her will compelled Mother Jackson to acknowledge the bones were the bones of her son—when she knew to the contrary. The negro had been buried for ten years, and it is strange indeed that the Jacksons did not become interested in the bones of this strange negro until Raymond filed his suit in 1930.

The whole affair would have been revolting to the sense of decency in the darkest corner of Africa, and little less than an outrage. All of which is in substance set out in Rhina Jackson's affidavit (R. 62-63)—and it is true.

Motion Citing Petitioner for Contempt.

Opposing counsel quotes a paragraph from R. 6-16 from respondents' response to opposing counsel's motion citing petitioner, his guardian and their lawyers to appear and show cause why they should not be held in contempt of Court. Opposing counsel did not deny any of the allegations of fraud, and they have never directly denied any of the allegations in the pleadings, the fraud of the conspiracy, and bribery and perjury which was practiced upon the petitioner, his guardian, and the Court. This fraud stands, in effect, admitted.

What other judgment could the trial court have rendered when the father, Davis A. Jackson, and his wife,

Rhina Jackson, testified positively that petitioner was not their son, through threats of great bodily harm forced his wife and some of their sons and daughters to testify to the same thing? The testimony was given corruptly for the express purpose of defrauding petitioner out of his forty acres of land and the proceeds of the oil, estimated in excess of $3,000,000.00. Said conspiracy, and the falsity of said testimony given corruptly with intent to deceive the court with the purpose of defrauding petitioner out of his property, all of which was concealed from the court, petitioner and his guardian, until after the death of Davis A. Jackson and his lawyers in 1939, 1941 and 1942, respectively, when the fear ceased, after which Rhina Jackson disclosed said conspiracy and fraud in her affidavit in April, 1943. (R., par. VIII, p. 49.)

In order to give this Court a better and clearer background, and a more accurate purpose in filing said petition in the County Court, the statement made by counsel on pages 9 and 10 of their brief should be supplemented by inclusion, the first paragraph of the *Amended* Petition filed in the County Court on May 1st, 1947, and also paragraphs 15 and 16 of said Amended Petition, we think accepting counsel's statement on pages 9 and 10, make it our proposition of fraud. We shall be standing on solid ground, on the assumption which is correct, that this issue of fraud which was concealed from the trial court and petitioner, which has never been judicially investigated, considered and adjudicated by the trial court or on appeal by the appellate court. It may be possible that the Court had the power to perpetually enjoin petitioner from tendering said issue of fraud, for judicial investigation and determination. We have grave doubt of the Court's power under the facts to so do. We do not hesitate to say that we be-

lieve that the Court had not the rightful authority to perpetually enjoin petitioner from having his day in Court, on this vital issue, since the Court was prevented on account of the concealment of the fraud from petitioner and the Court, until the disclosure of such fraud by the one innocent perpetrator, Rhina Jackson, until after the death of her husband and his two lawyers. This fraud goes to the very heart of petitioner's rights and cause of action.

We are almost persuaded to say that due to the fact that the fraud charged and concealed being of an aggravated form, corruptedly practiced upon the Court itself, thus depriving the Court of the exercise of judicial freedom which strikes at the very root and heart of the administration of justice. Not only this, it also involves the crime of subordination of perjury, virtually of the whole Jackson family.

We believe that we can almost prove from the language of this high Court in an important well-considered and well-written opinion announcing a salutary rule in the case of *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U. S. 338-371, 88 L. ed. 1250-1259, where the District Court of its own motion when its attention is called to the facts directly involved might have the power to initiate proceedings to correct the wrong and injury inflicted upon the court. The Court said:

> "Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is wrong against the institutions set up to protect and safeguard the public institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait until the diligence of litigants. The public

welfare demands that the agencies of public justice be not impotent that they must always be mute and helpless victims of deception and fraud."

This language implies that where fraud is committed directly against the court, the court of its own motion may set the process in operation to right the wrong.

There Are Some Strange and Mysterious Angles to This Case.

In the first place, some circumstances and implications indicate that the case might be on the border line of the "Civil Rights Law." Some other incidents were that Judge J. T. DICKERSON, formerly United States Judge for the Southern District of Indian Territory—a good man, a good lawyer and a good judge—was employed by Raymond. He filed an ejectment suit for the land and damages; two young bankers proposed to put up the money to finance the litigation on condition precedent that they be permitted to select and employ Raymond's counsel; this was agreed; Judge DICKERSON withdrew from the case. The Chief Counsel for the Magnolia Petroleum Company, a subsidiary of the Standard Oil Company, was employed as Raymond's chief counsel. The Carter Oil Company's subsidiary of the Standard Oil Company was represented by its chief counsel. He died while the case was pending in the appellate court in 1948 or 1949.

Judge R. L. WILLIAMS was the trial judge. Norvell and Norvell were the chief counsel for Davis A. and Rhina Jackson. Davis A. Jackson, after he betrayed his own flesh and blood, died in May, 1939. The Novells died in 1941 and 1942. A few years later the Carter's chief counsel died. A short time later the case was assigned to Judge BROADDUS who issued the first injunction in 1944. The second injunc-

tion issued in February, 1949. Judge BROADDUS died in the summer of 1949.

We have never been interested in, nor heard of such a strange case, having so many tragedies within such a short time. A person of superstitious tendencies might imagine that he could observe the hand of divinity on the side of "Civil Rights," since the atmosphere at that time was permeated with the spirit of Civil Rights' program.

We have shown that no trial has been had on the merits on any issue after 1934, five years before Davis Jackson died, seven years before his attorneys died, and nine years before Rhina Jackson confessed the fraud in 1943. Petitioner has never been able after several efforts to have a trial on the issue of this fraud; he has been enjoined since 1944, without any trial, and determination of this issue of fraud.

The trial of 1944 was upon a Motion for Summary Judgment resulting in a judgment, and of course a summary judgment could not consistently with the law and the rules of the Federal Court, be rendered upon an issue of fraud pursuant to a conspiracy, bribery and perjury, which issue had never been tried on the merits. This trial resulted in the injunction issued May 4, 1944.

The writer of this brief was not in the trial of that case, and had nothing to do with it until after the transcript of the record was printed for the Circuit Court of Appeals. We understand this was the first assignment Judge BROADDUS was required to execute pertaining to this litigation. The litigation had been in progress for more than a dozen years, and at that time petitioner had never had any trial or judgment reviewed by an appellate court.

Before a litigant and proceedings will be enjoined in a State Court, such court must have jurisdiction to retry the case previously tried in the Federal Court.

In our petition for the writ we quoted from the case of *Dugas* v. *American Surety Company*, 300 U. S. 414, 81 L. ed. 720, to the effect that *the court in which the injunction is sought may issue same, but the proceedings must not be of a different kind, nor upon a different principle.* In other words, you could not have the Federal Court to enjoin a proceeding or judgment prosecuted in a J. P. court, or county commissioners' court, or in a municipal court, and we might add a probate court, because we assume that neither one of the courts named would have jurisdiction and authority to retry a case previously tried in the Federal Court.

Counsel states if petitioner was in good faith in having the County Court of Tulsa County decree heirship, that the proceedings should have been in Seminole County. We alleged facts disclosing that the Seminole County Court did not have jurisdiction; that it had been more than three years since Jackson's death; that the proceedings in the Seminole County Court was void as to Raymond Jackson because no notice of any kind was given to the incompetent, nor his guardian; that the withholding of notice to the guardian and her ward was intentional and through fraud to prevent them from participating in the procedings; that after three years had expired under the statute the proceedings to declare heirship might be filed in any county, either in the District Court or County Court.

The question of jurisdiction was objected to by the oil company and argued fully; the court overruled the objection and counsel excepted and answered. We think the jurisdiction of the County Court would be controlled by the State Statute—is not a question for the Federal Court.

It was the duty of Carter Oil Company to be loyal, to protect petitioner as landlord, and not enter a conspiracy to defraud him out of his title.

The defendant oil company was the petitioner's lessee and the petitioner was the landlord. It was the duty of the lessee to be loyal to its landlord and use every reasonable means to protect its landlord's title. This loyalty and duty the lessee recognized until the trial of 1932 was about three-fourths concluded. This was shown by the fact that the Carter Oil Company placed petitioner on the witness stand in an effort to protect its lease. (R. 194) (Transcript of record filed in this Court December 5, 1946.)

Direct examination by Mr. Owen, chief counsel for Carter Oil Company:

"Q. Have you been sworn?

A. Yes, sir.

Q. State your name.

A. My name is Raymond Jackson.

Q. You are Raymond Jackson known as California Raymond?

A. I suppose that is what you would call it.

Q. Were you enrolled on any of the rolls of the Five Civilized Tribes?

A. Well, my roll is No. 49, new born, is all I know.

Q. New born what?

A. New born Seminole."

Counsel placed petitioner on the witness stand advisedly. He knew who the petitioner claimed to be and he also knew he was in reality the allottee of said land and was Raymond Jackson.

Soon after petitioner testified, the trial was drawing to a close. Soon after this testimony was given the Carter Oil Company joined the conspiracy and betrayed its trust, be-

ESTOPPEL.

Petitioner sued respondent, Carter Oil Company, to recover his 40-acre allotment. Davis A. and Rhina Jackson, father and mother, intervened, alleging petitioner was dead; if dead, title vested in interveners. Title in Carter Company by decree expired. This issue constituted contest until near the end of trial, 1932. Interveners' title based on conspiracy, bribery, and perjury (R. 62-63). Carter Oil Company proved by petitioner, he was Raymond Jackson, new born Freedman Seminole, Roll No. 49. (Testimony previous page.) Near the end of trial Carter Oil Company abandoned its former contention that Raymond was dead, reversed its position, joined interveners' fraudulent conspiracy, and compromised securing decree quieting title of its lease; quieting title to royalty in interveners; enjoined petitioner from claiming he is allottee, not only so, but from asserting his right to have his day in court on the issue of conspiracy and fraud. Carter Oil Company should be estopped after voluntarily proving by petitioner he was Raymond Jackson, allottee of said land. This contention was made by Carter Oil Company consistently for two years in court and out of court—with knowledge of trial judge.

It is probable that because the Carter Oil Company suddenly reversed its contention and abandoned its position, likely influenced the court to decide in favor of interveners. If the Carter Oil Company placed petitioner on the stand without knowing or believing he was the allottee of said land, thereby attempting to mislead the court, then this would constitute an additional ground for estoppel.

When Carter Oil Company's chief counsel placed Raymond on the stand under oath, he, in effect, said to the court: "He's the true Raymond, the allottee of the 40 acres of land," or else the company deceived the court when Carter Oil Company reversed its position, joined the conspiracy, and joined in selling Raymond's 40 acres in consideration for decree quieting title in its lease. The courts will not tolerate this double dealing in a court of justice!

We are just advised respondents are fraudulently attempting to settle case without notice to petitioner's counsel or guardian.

came disloyal and repudiated its landlord's title, assisting in fraudulently selling him out through a compromise.

We are quoting this record as testimony, only with the view and expectation that this Honorable Court may consider and apply the same as a background as corroborating petitioner's contention.

At the time this testimony was given, counsel did not entertain the thought that petitioner was engaged in a "racket." He thought he was a pretty decent fellow then. At this juncture the Carter Oil Company joined the conspiracy and as a result compromised the case, leaving Raymond out of the deal.

The next suit was filed by U. S. Commissioner Porter Smith in 1937. We do not mean to imply that he filed suit in his capacity as Commissioner. The Honorable ALFRED F. MURRAH granted leave to file the suit. Thereafter the defendants filed a motion to vacate the order granting leave and motion to dismiss the action, both of which motions were sustained and the action dismissed. No issue of fraud was tried in this case. Besides, this was before Rhina Jackson confessed the fraud in 1943.

The next action was filed in 1939 by James A. Harris, guardian for Raymond Jackson, by and through F. E. Riddle, attorney; defendants filed their motion to dismiss, consisting of between two and three hundred pages, to the best of our memory. The Clerk of the Circuit Court of Appeals estimated it would require a deposit of $1,050.00 to print the record, 90% required on motion to dismiss. Raymond was unable at that time to supply the amount.

The fraud of a conspiracy, bribery and perjury was not made an issue and adjudicated in this case, because it was concealed.

At the time Judge BROADDUS issued the first injunction, May 4, 1944, petitioner had never had any case reviewed by an appellate court.

Motion of defendants for citation for contempt filed in 1947. Prior to any review by any appellate court on the merits, there was an appeal from the judgment rendered in May, 1944, in which trial the only consideration the affidavits of Rhina Jackson and member of her family had was that Raymond's then attorney sought to introduce Rhina Jackson and her children's *ex parte* affidavits in evidence. The Court ruled them out as incompetent on the merit. (R. 156 F. (2d) 726.) Thus it is seen that Raymond Jackson had no opportunity to have the issue of fraud, the conspiracy, bribery and perjury determined after it was confessed in April, 1943, by Rhina Jackson and her children, and yet counsel have repeatedly alleged and secured injunctions enjoining Raymond, his guardian and his attorneys from further prosecuting any action on "relitigation" of issues, after, as alleged, they have been fully litigated in the Federal Court. They are in error. It did not happen.

Replying to counsel's concluding remarks of his brief on page 12. Counsel says the decree of May 4, 1944, should have ended the litigation subject only to right of appeal. We wonder what induced counsel to make this statement. Counsel should have one other condition, that is, that there had been no issue of fraud remaining untried and concealed.

If counsel can stand before this High Court, on his honor as a lawyer, and state to the Court and show wherein the fraud we have charged, of conspiracy, bribery and perjury, has ever been tried upon the merits, and show the Court by record that it has been tried even one time, then this would be a sufficient reason for counsel's contention.

We have never read in any opinion of the Court of Appeals wherein it has heretofore placed its stamp of disapproval upon the use of the courts, for the purpose of furthering a "racket" perpetrated by the petitioner upon lawyers and laymen. If it is true, it should be stopped; it has not happened by consent of his counsel. The biggest and boldest racket we have encountered was perpetrated by the respondents through conspiracy, bribery and perjury, practiced upon petitioner to the estimated amount of $3,000,000.00 all obtained through said fraud. We have no reference to Carter's chief counsel.

Counsel continue: "We feel confident that the Court will terminate this harassing litigation." We have never heard anyone complaining about being harassed except the Carter Oil Company. There may be a reason.

Well, an oil company takes and holds valuable oil property through a conspiracy, bribery and perjury, by and between the father and his attorneys from an "incompetent new born freedman," may be expected to be harassed just a little bit.

Counsel state that no one can say that petitioner has not had his day in court. Counsel are mistaken; their memory is faulty. We can say truthfully, and do say that petitioner has not had his day in court, which we have earnestly endeavored to have the issue tried without avail. We are corroborating our statement and argument by the record.

The issue of fraud had its basis in the trial of 1932, where we charged, after Rhina Jackson confessed the conspiracy, after her husband died, specifically, the conspiracy, bribery and perjury. That this conspiracy, bribery and perjury were concealed by the perpetrators, and locked in the breasts of the conspirators until after the death of Davis A. Jackson, the superior culprit, and the death of his at-

torneys, A. S. and R. S. Norvell, in 1941 and 1942, respectively. In April, 1943, Rhina Jackson confessed the fraud, as disclosed from Rhina Jackson's affidavit (R. 62-63); also the affidavits of Rhina Jackson's daughters and sons.

We copy paragraph one of the Amended Petition filed in the County Court, also paragraphs 15 and 16 (R. 54-55):

"AMENDED PETITION SEEKING INSTRUCTIONS ON BEHALF OF THE GUARDIAN, TO ESTABLISH HEIRSHIP, AND AN ORDER PERPETUATING CERTAIN TESTIMONY.

(Filed May 1st, 1947.)

"Comes now Mrs. James A. Harris, guardian of the Seminole County incompetent, Raymond Jackson, and files this, her Amended Petition, leave of the Court first had, the purpose of which is to have the Court to give petitioner instructions and advice as to any procedure in behalf of her ward relating to any of his property, including any interest he may have in his father's estate, and as to his allotment, and the propriety and the wisdom of any future proceedings relating thereto; to perpetuate the testimony of Rhina Jackson and certain brothers and sisters of Raymond Jackson, also to have a finding and declaration of heirship as relates to the estate of Davis A. Jackson, deceased, in that it is necessary for this Court and the guardian to ascertain this fact before the guardian can make and file an inventory herein and before the Court can properly give instructions administering upon the ward's property of any kind within the jurisdiction of the Court. It is not the purpose of this petition to attempt to vacate and set aside any judgment or decree rendered in any Federal Court, under this petition and this proceeding; it is our purpose to have the Court to find the facts on the questions above indicated, and the law will determine the results.

"That since the death of the said Davis A. Jackson in 1939, and since the death of the said Norvell and Norvell, which occurred in 1942 and 1943, respectively,

as your petitioner is advised, the fear under which the said Rhina Jackson, and also the sisters and brothers of petitioner's ward, Raymond Jackson, was lifted and disappeared, and subsequent to said date the said Rhina Jackson and her daughter, Roxie Jackson Gallimore, who appeared before Judge Kennamer, have made affidavits repudiating their former contention that Raymond was dead; that, in fact, he was who he professed to be, and repudiating the testimony they had given in the trial of the case of said Raymond Jackson against said Carter Oil Company, and admitted in said affidavits that they had been forced to swear falsely and corruptly in Court, under fear of great bodily harm and of being killed; that their testimony was false and was given under the influence as herein alleged for the express purpose of cheating Raymond, petitioner's ward, out of his forty acres of land and causing the record title to be vested in the Norvells and the said Davis A. and Rhina Jackson. A true copy of the said testimony of the said Rhina Jackson and Roxie Jackson Gallimore is hereto referred to and by reference marked 'Exhibits' and made a part hereof.

"Your petitioner avers that she desires to be instructed by this Court as to the filing of a petition in the nature of a Bill of Review, leave of the Court first being had, to be filed in the Federal District Court for the Eastern District of Oklahoma, to vacate and set aside the order of the Court entered by the Honorable Judge F. E. Kennamer, for the reason and upon the grounds that the said Court and the Judge thereof was deceived on account of the fraud practiced upon him and by reason of which said Order of Dismissal was induced and made and is wholly void and of no force and effect and should be eliminated from the records of said Court."

Conclusion.

Opposing counsel copied one paragraph from the Amended Petition filed in the County Court on May 1, 1947. Said paragraph standing alone does not present a fair representation of the purpose in filing said petition.

We are supplementing said paragraph by copying the first paragraph and paragraphs 15 and 16 in our brief on pages 16 and 17.

We are including in an Appendix a certificate of the Clerk of the Appellate Court, disclosing that three cases were appealed to the Appellate Court wherein the appeals were dismissed, but not upon the merits. Of course fraud was not involved.

It will also be noted that in the case of *Jackson* v. *Jackson,* 67 F. (2d) 719, the appellant was the Kentucky Raymond Jackson, though a portion of the facts stated in the opinion was credited to the California Raymond Jackson.

Of course it is self-evident that so long as the conspiracy and fraud as a result thereof could not be judicially investigated and adjudicated so long as said conspiracy and the fraud was concealed in the breasts of the conspirators, it was not confessed and did not come into the open until April, 1943.

We have shown that after the trial in 1934 that there was no other trial on the merits, no issue of the conspiracy, bribery and perjury determined up to and even subsequent to April, 1943. There was no issue of fraud; there was no trial upon the merits, other than in 1944 when the summary judgment was rendered on the pleadings, and of course the issue of fraud which we have made every reasonable effort since 1944 has never been determined; since this issue of fraud has never been denied by respondents, it would seem

that the responsibility for this fraud remaining as a wound on the Judicial Records; the only obstacle preventing the removal of this scar is the removal of the injunction by this high Court. If this injunction is removed, and this Court is the only power that can remove it, we shall do our utmost to finish the job.

Most respectfully submitted,

FINIS E. RIDDLE,
Mayo Building,
Tulsa, Oklahoma,

I. F. BRADLEY,
433 Minnesota Avenue,
Kansas City 4, Kansas,
Counsel for Petitioner.

APPENDIX.

CLERK'S CERTIFICATE.

United States Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Court of Appeals for the Tenth Judicial Circuit, do hereby certify that on November 13, 1934, case No. 1175, Raymond Jackson, appellant, vs. The Carter Oil Company, Rhina Jackson, Davis Jackson, A. S. Norvell and Spencer Norvell, appellees, was docketed on motion of appellees to docket and dismiss, and that on November 28, 1934, an order was entered granting appellees' motion to dismiss and that the appeal was dismissed out of this court for failure diligently to prosecute the same.

I further certify that on May 29, 1940, a case was docketed in this court as No. 2122 entitled James A. Harris,

as legal Guardian of Raymond Jackson, an incompetent, appellant, vs. Davis A. Jackson, Rhina Jackson, Executrix of Davis A. Jackson, deceased, Carter Oil Company, A. S. Norvell and R. S. Norvell, appellees; that on July 5, 1940, Mrs. Lucretia Bivens was substituted as legal guardian of Raymond Jackson, an incompetent, and that on November 18, 1940, this cause was dismissed on the court's own motion for failure of appellant diligently to prosecute the appeal.

I further certify that on January 2, 1945, case No. 3097, Raymond Jackson, an incompetent person, by Phil Oldham, next friend and Guardian ad litem, appellant, vs. The Carter Oil Company, a corporation, Rhina Jackson, Ruby P. Norvell, Carolyn Norvell Clarke, Annie Pauline Norvell and Albert Norvell, appellees, was docketed in this court on appellees' motion to docket and dismiss and that on January 2, 1945, the motion of appellees to docket and dismiss was granted and the appeal was dismissed out of this court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 1st day of May, A. D. 1950.

(Seal)

ROBERT B. CARTWRIGHT,
Clerk of the United States
Court of Appeals, Tenth Circuit.